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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,911	03/19/1999	TAKESHI KIKUCHI	25484.00715	6247
7590	12/31/2003		EXAMINER	
DAVID L. FEHRMAN MORRISON & FOERSTER 555 WEST FIFTH STREET SUITE 350 LOS ANGELES, CA 90013-1024			STEVENS, ROBERTA A	
			ART UNIT	PAPER NUMBER
			2665	
			DATE MAILED: 12/31/2003	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/272,911	KIKUCHI, TAKESHI	
	Examiner	Art Unit	
	Roberta A Stevens	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4,5,10,11,13,14,19-23 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4,5,10,11,13,14,19-23 and 28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4, 5, 10, 11, 13, 14, 19-23 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Tokuhiro (U.S. 6088364).
3. Regarding claim 1, Tokuhiro teaches (figures 1-3) a communication device comprising: a transfer rate estimator which estimates transfer rate of media data other than digital audio data before transmission in accordance with a communication rate of a communication network; a data amount controller which controls the amount of the digital audio data to be transmitted in accordance with the transfer rate estimated; and a transmitter which transmits the audio data whose data amount is controlled by data amount controller and the media data other than the audio data and data amount information indicating data amount of the audio data controlled by data amount controller.
4. Regarding claim 2, Tokuhiro teaches (figures 1-3) an input device which inputs the audio data and the media data to the communication device.
5. Regarding claims 4, 13 and 22, Tokuhiro teaches (figures 1-3) the data amount controller thins out the audio data to control its data amount.
6. Regarding claims 5, 14 and 23, Tokuhiro teaches (column 3) the media data is MIDI data.

7. Regarding claim 10, Tokuhiro teaches (figures 1-3) a communications method comprising: estimating transfer rate of media data before transmission in accordance with a communication rate of a communication network; controlling data amount of digital audio data to be transmitted in accordance with the estimated transfer rate; and transmitting the audio data whose data amount is controlled by the controlling step, the media data and data amount information.

8. Regarding claims 11 and 20, Tokuhiro teaches (figures 1-3) inputting the audio data and media data before estimating a transfer rate.

9. Regarding claim 19, Tokuhiro teaches (figures 1-3) a recording medium storing a program which causes a computer to estimating transfer rate of media data before transmission in accordance with a communication rate of a communication network; controlling data amount of digital audio data to be transmitted in accordance with the estimated transfer rate; and transmitting the audio data whose data amount is controlled by the controlling step, the media data and data amount information.

10. Regarding claim 21, Tokuhiro teaches (figures 1-3) the transmitting step transmits data amount information indicating whether the amount of data is controlled by the controlling step together with the audio data.

11. Regarding claim 28, Tokuhiro teaches (figure 1-3) a communication device comprising: a transfer rate estimation means for estimating transfer rate of media data other than digital audio data before transmission in accordance with a communication rate of a communication network; a data amount controlling means for controlling the amount of the digital audio data to be transmitted in accordance with the transfer rate estimated; and a transmission means which

transmits the audio data whose data amount is controlled by data amount controlling means and the media data other than the audio data and data amount information indicating data amount of the audio data controlled by the data amount controlling means.

Conclusion

12. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Roberta Stevens whose telephone number is (703) 308-6607. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:30 p.m.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached on (703) 308-6602.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

15. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to: (703) 872-9306

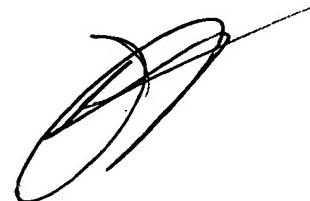
For informal draft communications, please label "PROPOSED" or "DRAFT"

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA. Sixth Floor (Receptionist).

Roberta A. Stevens

Patent Examiner

12-23-03



STEVEN H. D. NGUYEN
PRIMARY EXAMINER